

SUBCOMMITTEE NO. 2

Agenda

S. Joseph Simitian, Chair
Dave Cogdill
Alan Lowenthal



Hearing Outcomes

(see Subcommittee actions under individual issues)

Thursday, April 22, 2010

Upon Adjournment of Environmental Quality Committee
Rose Ann Vuich Hearing Room (2040)

Consultant: Bryan Ehlers

<u>Item</u>	<u>Department</u>	<u>Page</u>
Vote-Only Items		
3125	California Tahoe Conservancy	2
3560	State Lands Commission.....	2
3640	Wildlife Conservation Board	2
3680	Department of Boating and Waterways	3
3720	California Coastal Commission	4
3820	San Francisco Bay Development and Protection Commission.....	4
Discussion Items		
Various	Funding and Implementing the 2009 Water Package (Including requests from: Department of Water Resources; Delta Stewardship Council; Sacramento-San Joaquin Delta Conservancy; and Delta Protection Commission)	5
	Review of the Bond Context	19
3860	Department of Water Resources	21
Various	Various Bond Funding Requests (Including requests from: California Tahoe Conservancy; Wildlife Conservation Board; State Coastal Conservancy; Santa Monica Mountains Conservancy; San Joaquin River Conservancy; Baldwin Hills Conservancy; Coachella Valley Mountains Conservancy; and Sierra Nevada Conservancy).....	39
3480	Department of Conservation.....	44
Various	Legal Services Fund Swap Proposal (Including: California Coastal Commission; State Lands Commission; and San Francisco Bay Development and Protection Commission).....	47
Appendix A – LAO's CALFED Recommendation		50

Resources—Environmental Protection—Energy—Transportation

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Items Proposed for Vote-Only

3125 California Tahoe Conservancy

1. COBCP-1: Implementation of the Environmental Improvement Program (EIP) for the Lake Tahoe Basin—Non-Bond Funds Only. The Governor requests \$6.4 million from various funds (including \$391,000 from the Habitat Conservation Fund; \$594,000 from the Lake Tahoe Conservancy Account; \$5 million federal funds; and \$440,000 in reimbursement authority) for ongoing implementation of the EIP for the Lake Tahoe Basin.

3560 State Lands Commission

2. BCP-1: School Lands Geothermal Workload. The Governor requests \$160,000 in reimbursement authority (to be supported by School Lands Revenue) to fund increased workload related to geothermal resource development on lands held by the Commission pursuant to the School Lands Bank Act.

3640 Wildlife Conservation Board

3. COBCP-1 (Minor Capital Outlay): Funding for Public Access Programs. The Governor requests \$1 million (Wildlife Restoration Fund) to support projects identified for their wildlife-oriented public access values (including increasing compliance with the Americans with Disabilities Act).

4. COBCP-1: Annual Habitat Conservation Fund Appropriation for Support of Wildlife Protection Act Activities. The Governor requests \$21 million (Habitat Conservation Fund—via transfer from Proposition 1E) for the acquisition, restoration or enhancement of: habitat including native oak woodlands necessary to protect deer and mountain lions; habitat to protect rare, endangered, threatened, or fully protected species; enhancement, or restoration of wetlands, aquatic habitat for spawning and rearing of anadromous salmonids and trout resources and riparian habitat.

5. COBCP-6: Technical Adjustment—Proposition 84 Reversion to Accommodate Sacramento-San Joaquin Delta Appropriation. The Governor requests reversion of \$3 million from the Wildlife Conservation Board's Budget Act of 2009 Proposition 84 appropriation (Item 3640-301-6051). The funds made available in Proposition 84 for Natural Communities Conservation Planning (NCCPs) purposes were inadvertently over-appropriated when Chapter 2, Statutes of 2009, Seventh Extraordinary Session (SBx7 8) appropriated \$24 million for NCCPs in or around the Sacramento-San Joaquin Delta.

3680 Department of Boating and Waterways

6. BCP-1: Public Small Craft Harbor Loans and Boat Launching Facility Grants.

The Governor requests a total of \$16 million in local assistance from the Harbors and Watercraft Revolving Fund (HWRF)—\$6 million for grants and \$10 million for public loans—to renovate existing publicly owned small craft harbor facilities and construct/improve public boat launch facilities.

7. BCP-2: Abandoned Watercraft Abatement Fund (ABAF) Grant Program.

The Governor requests \$500,000 (HWRF) to establish a permanent baseline budget for the ABAF. The ABAF was created to provide grants (requiring a ten percent match) to locals to remove abandoned watercraft and water hazards which threaten public safety on California's waterways.

8. BCP-4: Abandoned Watercraft Surrender Program (AB 166 Implementation).

The Governor requests a \$150,000 transfer from the HWRF to the Abandoned Watercraft Abatement Fund, and authority to expend \$100,000 of those funds to implement a pilot program, pursuant to Chapter 416, Statutes of 2009 (AB 166, Lieu), to provide grants to locals for disposal of dilapidated and unseaworthy vessels surrendered by their owners before they are abandoned. The goal of the program is to improve safety and environmental quality on state's waterways by reducing the number of abandoned vessels; however, it is hoped that an ancillary benefit will be avoided costs associated with removing badly dilapidated abandoned vessels from the water.

9. COCPs: Minor Capital Outlay Projects. The Department of Boating and Waterways requests a total of \$5.4 million (HWRF) for the following minor capital outlay projects:

- a. Statewide Emergency Repairs and Replacement – \$300,000
- b. Statewide Low-Water Improvements – \$600,000
- c. Folsom Lake SRA Granite Bay Stage 2 Ramp Improvements – \$700,000
- d. Folsom Lake SRA Rattlesnake Bar State 2 Ramp Improvements – \$690,000
- e. Silver Strand State Beach Crown Cove Dock – \$400,000
- f. Sonoma Coast State Beach Jenner Visitor Center Boat Ramp Improvements – \$500,000
- g. Mono Lake State Reserve Boat Ramp Improvement – \$290,000
- h. Millerton Lake SRA South Finegold Non-Motorized Access – \$275,000
- i. Gaviota State Park Boat Hoist Improvements – \$200,000
- j. Delta Meadows Boat Ramp Improvements – \$200,000
- k. Turlock Lake SRA Tuolumne River Access – \$125,000
- l. Ahjumawi State Park Boat-In Site Improvements – \$275,000
- m. Salton Sea SRA Corvina Beach Kayak Camp – \$375,000
- n. McArthur-Burney Falls State Park Lake Britton Fish Cleaning Station – \$70,000
- o. Castaic Lake Lagoon Boat Ramp Improvements – \$400,000

3720 California Coastal Commission

10.BCP-1: Coastal and Marine Education Whale Tail License Plate Program. The Governor requests a one-year augmentation of \$127,500 (Environmental License Plate Fund, California Beach and Coastal Enhancement Account) to be supported by revenue collected from the sale of “Whale Tail” license plates. The increase will fund additional coastal education grants to non-profits and government agencies.

11.BCP-2: Operating Expenses and Equipment (OE&E) and Information Technology Baseline Budget Adjustments and One-Time Costs. The Governor requests a baseline increase of \$311,000 (OE&E) and a one-time augmentation of \$80,000 (IT) from the Coastal Act Services Fund to support basic operations of the Commission, including training, equipment, and travel to legally mandated meetings.

3760 State Coastal Conservancy

12.BCP-1: Redirect Existing Funds to Create Two Positions within the Ocean Protection Council. The Governor requests two permanent positions and shifting of \$166,000 (Environmental License Plate Fund) from OE&E to personal services in order to support Ocean Protection Council efforts related to marine debris management, coastal sediment dynamics, sea level rise adaptation, and endangered species protection, among others.

13.COBCP-1: Public Access Program. The Governor requests \$985,000 from various special funds (Coastal Access Account; Beach and Coastal Enhancement Account; and the Violations Remediation Account) to continue implementation of the Conservancy’s Public Access, Education, and related programs.

3820 San Francisco Bay Conservation and Development Commission

14.BCP-1: Reimbursements for Contracting with Metropolitan Transportation Commission (MTC) and the California Department of Transportation (Caltrans). The Governor requests \$460,000 (reimbursement authority) and to make permanent three limited-term positions in order to continue contracting with MTC and Caltrans for permit review and planning activities to expedite projects delivery.

Staff Recommendation (for Vote-Only Items 1-14): APPROVE Items 1-14.

Action: Approved on a 2-0 vote (Cogdill absent).

Departments Proposed for Discussion

Funding and Implementing the 2009 Water Package

In late 2009, the Legislature and the Governor agreed upon an historic package of water-related legislation that addressed a host of water issues challenging the state of California, in particular the preservation, restoration, and sustainable management of the Sacramento-San Joaquin Delta (Delta). The series of five bills passed in the Seventh Extraordinary Session of 2009, henceforth referred to collectively as “the Water Package,” are summarized in the table below, developed by the LAO.

Figure 4

The Major Components of the 2009 Water Package

Bill	Topic	Key Provisions
SBX7 1 (Chapter 5, Simitian and Steinberg)	Delta Governance	<ul style="list-style-type: none"> Creates Delta Stewardship Council and Delta Conservancy, and reconfigures existing Delta Protection Commission. Requires the council to create a management plan for the Delta (incorporating work from existing planning efforts)—the Delta Plan. Requires development of water flow criteria for Delta ecosystem.
SBX7 2 (Chapter 3, Cogdill)	Water Bond	<ul style="list-style-type: none"> Places an \$11.1 billion legislative bond on the November 2010 ballot, providing for multiple water program goals. Reactivates California Water Commission (with continuous appropriation authority for new storage projects).
SBX7 6 (Chapter 1, Steinberg and Pavley)	Groundwater	<ul style="list-style-type: none"> Requires groundwater elevation monitoring by local agencies (with guidance from Department of Water Resources). Bars counties and certain local agencies that do not comply with reporting from receiving state water grants and loans.
SBX7 7 (Chapter 4, Steinberg)	Water Conservation	<ul style="list-style-type: none"> Requires a 20 percent reduction in urban per capita water use (and 5 percent overall base reduction—regardless of population) by 2020. Requires agricultural water efficiency, and changes certain water recycling and stormwater targets.
SBX7 8 (Chapter 2, Steinberg)	Water Diversion/Rights	<ul style="list-style-type: none"> Requires increased reporting of water use and water diversion; increases certain penalties for water rights violations.

As discussed previously at a joint Senate-Assembly, policy-budget committee oversight hearing on March 9, the Governor’s Budget contains a number of requests associated with implementation of the Water Package, with the bulk of the proposed spending aimed at assembling the new Delta Governance structure pursuant to Chapter 5 (SBx7 1, Simitian and Steinberg). As outlined in the table below, nearly half of proposed Water Package funding would go to support the new Delta Stewardship Council (Council), the new Delta Conservancy, and the Delta Protection Commission.

Governor's Budget Proposal to Implement the Water Package

State Agency/Major Activities	Proposed 2010-11 Expenditures (in millions)
Delta Stewardship Council <ul style="list-style-type: none"> Creation of the Delta Plan, establishment of the Council, continuation of Delta science programs. 	\$49.1
Department of Water Resources <ul style="list-style-type: none"> Reactivation of the California Water Commission, groundwater monitoring, water conservation projects, and the \$28 million Two-Gates Fish Protection Demonstration Project. 	35.0
Wildlife Conservation Board <ul style="list-style-type: none"> Continuous appropriation authority for Natural Communities Conservation Planning (NCCP) projects. 	24.0
State Water Resources Control Board <ul style="list-style-type: none"> Increased water rights enforcement, new water diversion reporting, Delta Watermaster Program, and water conservation activities. 	5.4
Delta Protection Commission <ul style="list-style-type: none"> Preparation of an economic sustainability plan. 	2.0
Delta Conservancy <ul style="list-style-type: none"> Establishment of the conservancy and early action projects. 	1.3
Department of Fish and Game <ul style="list-style-type: none"> Development of Delta flow criteria. 	1.0
Total	\$117.8

Of the amounts listed above, the vast majority are proposed to be supported in the Budget Year (BY) from existing bond funds (as opposed to the water bond to be sent to the ballot, Chapter 3 [SBx7 2, Cogdill], which was not designed as a funding mechanism for the Water Package).

Below are descriptions and discussions, grouped by theme, of each Water Package-related BCP. Staff notes that there is no BCP before the Legislature for the NCCP projects funding because the Wildlife Conservation Board (WCB) received an appropriation of \$24 million (Proposition 84) in Chapter 2 (SBx7 8, Steinberg). Similarly, SBx7 1 appropriated \$28 million (Proposition 84) to fund the "Two-Gates" project; however, the Governor has proposed to shift this funding to Proposition 50 (and use Proposition 84 funds for other purposes), so the Legislature has a funding decision before it on this item.

Water Package BCPs

Delta Governance. SBx7 1 established **co-equal goals** for the Delta of providing a more reliable water supply to the state, and restoring and enhancing the Delta ecosystem. The bill tasked several entities with carrying out this mission.

1. BCP: Staff Delta Stewardship Council. SBx7 1 created the Council, consisting of seven members with diverse expertise and a broad statewide perspective, and tasked it with the following:

- Develop a **Delta Plan** to guide state and local actions in the Delta in a manner that furthers the co-equal goals (noted above);
- Develop performance measures for the assessment and tracking of progress and changes to the health of the Delta ecosystem, fisheries, and water supply reliability;
- Determine if a state or local agency's project in the Delta is consistent with the Delta Plan and the co-equal goals, and act as the appellate body in the event of a claim that such a project is inconsistent with the goals;
- Determine the consistency of the Bay-Delta Conservation Plan (BDCP) with the co-equal goals; and
- Appoint the Delta Independent Science Board (as a successor to the CALFED Science Program) to provide oversight and review of the scientific research, monitoring, and assessment programs that support adaptive management of the Delta.

Governor's Budget. The Governor requests 58 positions and \$49 million (including \$5.9 GF; \$2.9 million federal funds; and the remainder from bond funds and bond-funded reimbursements) to support first-year operations of the new Council. Consistent with SBx7 1, the bulk of these resources (50 positions and \$34.3 million) are proposed to be transferred from various departments previously responsible for implementing the CALFED program (primarily the Natural Resources Agency, but also the Department of Forestry and Fire Protection, the Department of Fish and Game, and the State Water Resources Control Board). The remaining eight positions are for the Council members, including the Chair and his assistant, and would be new. The roughly \$16 million in increased funding is for development of the Delta Plan (by January 1, 2012) and would come from Proposition 84 (Prop 84) funds (\$2 million previously appropriated to the Department of Water Resources [DWR] by Chapter 1, Statutes of 2008, First Extraordinary Session [SBx2 1, Perata] and the remaining \$14 million from the DWR's Prop 84 funds—requiring a reversion and a new appropriation).

LAO Recommendation. The LAO provides the following analysis and recommendations regarding the Governor's proposals for the Council:

Evaluation of Governor's Budget Proposals for Delta Stewardship Council

In order to provide context for an evaluation of the Governor's budget proposals for the new Delta Stewardship Council (Council), we believe it is useful to first review two of the Council's core statutory responsibilities—the development of the Delta Plan and its work in connection with the Bay Delta Conservation Plan (BDCP) process. We discuss both of these responsibilities further below, and then comment on the 2010-11 budget that is proposed for the Council.

The Delta Plan. The council's main statutory assignment is the development and adoption of the Delta Plan, a planning document to guide state and local agency actions within the Delta. The plan is intended to further the state's goals of ecosystem health and water supply reliability which are to guide the state's actions in the Delta. The plan would guide the state's coordination efforts with other levels of government, and take into account other state Delta planning efforts, including the BDCP process (which we discuss in greater detail below).

The Bay Delta Conservation Plan. As part of its development of the Delta Plan, the council is required to consider the BDCP currently being developed by DWR and a group of stakeholders (including state environmental agencies, local water agencies, and environmental organizations). The council is not required to incorporate the BDCP into the Delta Plan, however, unless certain conditions are met. Specifically, the Department of Fish and Game must determine that the BDCP meets the qualifications to be deemed a natural community conservation plan. Also, the BDCP must have been approved as a habitat conservation plan that meets requirements in the federal endangered species law. The BDCP is being developed to create a long-term conservation strategy for the Delta. When complete, the plan would provide the basis for the issuance of endangered species permits necessary to allow operations of both the state and federal water projects in the Delta for the next 50 years.

This BDCP planning process is voluntary. The stakeholders and the departments participating in this planning process are not required to adopt this plan when it is completed. If the BDCP were not adopted, then the state and federal water projects would again be at risk of being held in noncompliance with endangered species laws. These agencies would therefore be required to achieve compliance with endangered species laws by the more traditional regulatory permitting process.

In order to ensure that the Delta Plan and the BDCP mesh well, the Council is expected to closely monitor and, to some degree, participate in the BDCP process. However, state law also contemplates that the Council will independently review the BDCP and make recommendations as to how it would be implemented.

The Proposed Council Budget. [Section deleted for brevity. See "Governor's Budget" section above for description of proposed funding.]

Figure 8
Positions Proposed for Delta Stewardship Council

Executive	19
Administration	14
Science	12
Planning and accountability	8
External affairs	5
Total	58

Contract Funding Proposed. The Council budget would provide funding for \$42.7 million in contracts with outside contractors and other state agencies. Of that total, \$16 million (paid for with reimbursements from DWR) would be earmarked for the development of the Delta Plan. The budget also assumes that the Council would contract for a project director (at an as-yet-undetermined amount), who would develop a process and schedule to accomplish the Delta Plan, to make presentations to the Council, and to ensure integration of the Delta Plan. Under the Governor's budget plan, this contracted project director would report to an executive-level staff member at the Council.

The Council budget would also continue an existing CALFED contract originally established under the Natural Resources Agency for a BDCP liaison at an annual cost of about \$159,000. The contractor would coordinate Delta-related activities among various state and federal agencies and the council, as well as manage public and legislative outreach activities on behalf of the Council.

Some Budget Modifications Warranted. In general, we believe the Council's budget proposal follows legislative direction regarding the transfer and use of existing resources to establish the Council. However, we recommend two modifications to the proposed budget. We find that the work that would otherwise be assigned to a project direction contractor should instead be handled by one or more of the proposed 19 executive-level staff proposed for the Council. Accordingly, we recommend reducing the Council's budget by \$200,000 (bond funds), our estimate of the approximate annual cost of such a contract.

The proposal to continue the current contract arrangement for a BDCP liaison is also problematic. The current contractor for the Council is the Metropolitan Water District (MWD) of Southern California. Contracting with such a major stakeholder of the BDCP could compromise the ability of the council to conduct its BDCP-related work objectively and without the perception that it was being unduly influenced by one party to the BDCP process. Thus, we recommend reducing the Council's budget by \$79,000 (bond funds) to eliminate the contract for the remaining six months of the contract (June through December 2010). We believe the liaison functions could likewise be handled by one of the Council's executive-level staff.

Long-Term Financing Approach Needed

How Will Implementation of the Delta Plan Be Financed? The new legislative water package requires that implementation of the Delta Plan to be developed by the Council begin by January 2012. However, the water package did not provide a long-term financing plan (the proposed water bond was not designed to fund all components of the legislative package), including for implementation of the Delta Plan. Thus, it is not clear how implementation of a new Delta Plan would be able to proceed in a timely manner as contemplated in the recent legislation.

As we have noted in the past, we believe development of a long-term plan to guide the state's investments in the Delta is warranted. In the absence of such a plan, it has been difficult for the Legislature to evaluate numerous Delta-related funding requests. The development of a long-term financing plan should await the completion of a number of Delta-related assessments. However, these assessments are now largely complete. The two-year timetable for development and implementation of a Delta Plan makes it all the more imperative that such a long-term financing plan also be developed and put in place.

We also continue to believe that such a financing plan should reflect the implementation of the "beneficiary pays" funding principle, whereby the public and private beneficiaries of a state expenditure pay an appropriate share of costs based on the benefit received. We have elaborated on the analytical arguments for this approach in past analyses of resources issues.

Council Should Develop a Long-Term Financing Plan for Delta Improvements. Based on these findings, we recommend that the Legislature adopt statutory language as a part of the budget directing the Council to develop a comprehensive long-term financing plan for state expenditures to implement the Delta Plan in conjunction with the Governor's 2011-12 budget proposal. The plan should identify a long-term funding strategy to support the ongoing operations of the Council and the Delta Conservancy. This plan should be based on the beneficiary pays principle and should clearly delineate public versus private benefits of ongoing state operations expenditures and capital projects reflected in the Delta Plan. If new fees are proposed to carry out actions recommended in the Delta Plan, the fees should be reasonable and proportionate to the benefits directly received by the fee payer. Finally, as we have often recommended in the past, bond financing should be used only for capital projects that have long-term benefits, and for reasonable administrative costs related to those capital projects.

Staff Comments. Staff shares many of the concerns of the LAO, and notes the following regarding the recommendations:

- ***Contract for Project Director for Delta Plan*** – Council staff respond to the LAO recommendation by pointing out that of the 19 positions identified as "executive staff," seven are Council members and seven are clerical/support staff, leaving only five positions to accommodate the recommendation—including the

Executive Director, Chief Counsel, Legislative Director, Chief Deputy, and the Science Deputy. According to Council staff, none of the personnel occupying these positions currently possesses the requisite background in environmental law, water project engineering, and project management and control to carry out the required workload. Furthermore, Council staff contend that the timeline specified in statute necessitates this need be met rapidly and precludes the hiring of a new permanent staff person at this time.

Staff notes that this issue highlights a broader concern for the Committee's consideration—i.e., whether the personnel currently filling the positions proposed to be transferred to the Council are still “right for the job.” The very adoption of the Water Package (including the repeal of the legislation that originally established the Bay-Delta Authority) marks a break with past Delta policy (which is viewed in many circles as failed policy), and opens a new chapter and a fresh beginning. As such, the Committee should inquire with members of the Council as to whether shuffling the same staff to a new agency and a new boss is enough to meet the high expectations of both the Legislature and the public. Furthermore, and more fundamentally, the Committee (and the Council itself) need to ask whether the individuals in those positions have the correct skill sets and the right mind set to implement the new policy embodied in the Water Package.

To the specific question of the Delta Plan Project Director, the Committee may wish to inquire as to why it is not in the long-term best interest of the Council and the state, to bring the personnel with the requisite skills into state service. Further, the Council should be asked to clarify its concerns around Delta Plan timelines that preclude hiring a permanent staff person and necessitate the proposed contract.

Finally, apropos of the issues just discussed, the LAO has recommended requiring the Administration to submit a zero-based budget proposal for Fiscal Year 2011-12 for all CALFED and Delta-related activities (see Appendix A). Staff notes that, were the current timelines not so tight (for both the development of the Delta Plan and the budget process), the ideal time to zero-base these budgets (including the Council) would be now—before implementation of new policies gets underway and before new (or, as the case may be, old) standard operating procedures and organizational culture are established. In either case, staff supports the LAO recommendation to zero-base the CALFED and Delta-related budgets, and recommends the Committee closely consider the timing issue—i.e., whether to require the zero-basing next year, or whether to demand that it be done this year.

- **Contract for BDCP Liaison** – In response to the LAO recommendation that an existing (two-year) contract with MWD for a BDCP liaison should be canceled and the workload re-assigned to executive-level staff, Council staff indicate the contract has been transferred to the DWR (although it is still funded by the

Council). Furthermore, Council staff contend that they lack the requisite expertise to meet the need filled by the current contractor.

Staff again shares many of the concerns of the LAO. Notwithstanding the contract's having been moved to the DWR, the fact that the Council proposes to continue *funding* a contract with MWD, a major stakeholder of the BDCP, could compromise the ability of the Council to conduct its BDCP-related work objectively and without the perception that it was being unduly influenced by one party to the BDCP process.

- **Long-Term Financing Plan** – Staff supports the LAO's recommendation that the Committee direct the Administration to develop and propose a long-term financing plan for Delta improvements. Generally speaking, every \$1 of bond spending costs the taxpayers (via the GF) \$2 in long-term bond debt service. For this reason, the LAO's advice, that bond financing should be used only for capital projects that have long-term benefits, and for reasonable administrative costs related to those capital projects, is quite sound. Furthermore, the "beneficiary pays" principle seems like an apt approach to fund activities in the Delta since, for example, many of the costs the state anticipates incurring there in the coming years are the result of water exports to other parts of the state, whose historic price has not included the costs of related environmental degradation. Staff notes that while this issue may be the focus of other pending legislation, the Committee may wish to provide a "back-stop" by adopting trailer bill language requiring a financing proposal in the coming fiscal year.

Staff Recommendation: HOLD OPEN.

Action: Held open. The Committee expressed intent to adopt LAO recommendation to zero-base the Council budget with the expectation that other agencies formerly participating in CALFED (e.g., DWR) would be responsible for zero-basing their own share (i.e., the undertaking would not fall solely to Council personnel). Additionally, the Committee:

- 1. Expressed desire for a clear line of accountability between the Council and the contractors responsible for helping develop the Plan. This could potentially be accomplished by identifying the state staff—tasked with contractor oversight—who would ultimately answer for all Plan activities. Staff will work with LAO and the Assembly to reach final recommendation.**
- 2. Raised concern with use of BDCP liaison with connections to MWD. To the extent that most contract applicants are likely to have had a relationship with the BDCP process, the council Chair suggested that the Committee may wish to adopt language specifying that contract must be independent.**
- 3. Agreed that a long-term financing plan for Delta activities is necessary. As discussions of a "beneficiary pays" fee continue in the policy arena, the Committee agreed with the LAO that looking at existing "CALFED" funds (via the zero-base process) is a good interim strategy.**

2. BCP: Staff Delta Conservancy. SBx7 1 created the Delta Conservancy to implement ecosystem restoration activities in the Delta, and tasked it with the following:

- Adopt a strategic plan for implementation of the Delta Conservancy goals;
- Promote economic vitality in the Delta through increased tourism and the promotion of Delta legacy communities;
- Promote environmental education about, and the public use of, public lands in the Delta; and
- Assist in the preservation, conservation, and restoration of the region's agricultural, cultural, historic, and living resources.

Governor's Budget. The Governor requests seven positions and \$1.3 million (including \$829,000 GF and \$500,000 bond-funded reimbursements) to support first-year operations of the new Delta Conservancy. These resources are part of the 57 positions and associated funding currently allocated to CALFED (the balance of which are to be transferred to the Council—as noted above).

Staff Comments. According to the Administration, this proposal represents only an initial allocation of resources for the Delta Conservancy, and will be augmented in the out years by additional transfers of positions and funding from the Council as activities—particularly those surrounding the development of the Delta Plan—ramp down. Therefore, consistent with the LAO's recommendation above, the Delta Conservancy must be part of any discussion of a long-term financing plan for CALFED and Delta-related activities.

Staff Recommendation: HOLD OPEN.

Action: <i>Held open.</i>

3. BCP: Augment Delta Protection Commission. SBx7 1 restructured the Delta Protection Commission (Commission), reducing the membership from 23 to 15, and tasked it with adopting, by July 1, 2011, an economic sustainability plan for the Delta, which is to include flood protection recommendations to state and local agencies, and must be submitted to the Council for inclusion in the Delta Plan.

Governor's Budget. The Governor requests six positions (three permanent and three one-year, limited-term) and \$2 million (Environmental License Plate Fund--ELPF) to:

- Prepare, adopt, and update periodically the Delta economic sustainability plan (noted above);
- Complete the process for establishment of a Delta National Heritage Area by Congress;
- Review and analyze land use proposals in the Primary Zone and the completion of a management plan in order to make recommendations to the Council;
- Support the council as a voting member; and
- Support the Delta Conservancy as a member of the Advisory Committee.

Staff Comments. The Commission currently has a staff of three positions, including the Executive Director. Thus, the requested resources would double the existing staff in the long-term and triple it for FY 2010-11. While staff finds that the requested resources are likely sufficient to address the required workload—particularly preparation of the economic sustainability plan for 2011—representatives of several Delta counties have raised concern that the Commission's ongoing budget may not be adequate to support its role in supporting the Delta Conservancy and serving as a major forum for Delta counties to participate in major Delta policy decisions in the coming years.

Staff's major concern with this proposal is the use of the ELPF to support \$2 million in new expenditures at the Commission. Based on the Administration's projects, the ELPF will finish FY 2010-11 with a reserve of only \$555,000 (or 1.2 percent). Given the poor state of the economy, the fact that the license plate fee was raised by eight dollars just over a year ago, and the potential for sales to sag, staff is uncomfortable with the rather thin margin of error the Governor has proposed with respect to the ELPF. Therefore, the Committee may wish to inquire of the Commission and the DOF as to whether other funding options are available. Staff additionally notes that this issue once again highlights the need for a long-term financing plan for Delta-related activities. To the extent that local Delta entities (e.g., the counties) wish to support the Commission's role (as noted above), the Committee may wish to consider financial contributions from locals as one element of a long-term funding plan for the Commission. (Current statute allows the Commission to receive and expend various non-state funds.)

Staff Recommendation: HOLD OPEN.

Action: Held open. The Chair offered no comment on public request for more Commission funding, but indicated this did not necessarily "reflect concurrence."

California Water Commission Reactivation. Chapter 3 (SBx7 2, Cogdill)—the Water Bond Act of 2010—if approved by the voters, would authorize \$11.1 billion in general obligation bonds to support California’s aging water infrastructure and for projects and programs to address the ecosystem and water supply issues in California. SBx7 2 also envisions reactivation of the California Water Commission (Water Commission) after years of dormancy, and outlines various tasks for the Water Commission to perform, including setting rules for selecting projects for the state's investments in public benefits.

BCP: Staff California Water Commission (DWR). The Governor requests six positions and \$817,000 (various funds, but primarily State Water Project—SWP) for support of the nine-member Water Commission (which currently has no staff or appointed members) and its implementation of activities specified in SBx7 2 (Water Bond Act of 2010; or Water Bond). The DWR notes that this request would result in a net budget increase of only \$71,000 because the balance of the requested funding would be shifted from other existing sources, including \$111,000 GF and \$550,000 from the SWP which is continuously appropriated (off-budget).

Staff Comments. If approved by the voters, the Water Bond Act of 2010 would send over \$3 billion of continuously appropriated funds through the Water Commission. Since the Commission is currently inactive and without staff, this proposal would provide the necessary staffing to process those funds. If the Water Bond Act of 2010 is not approved, the DWR argues that the requested resources are still needed as the Water Commission would play a major oversight role in eminent domain decisions and would be required to approve a resolution for those decisions to move forward. Given that the Water Commission has remained dormant for many years, the Committee may wish to further investigate these claims that staffing is needed immediately. In the absence of a compelling rationale, staff will ultimately recommend the Committee adopt TBL to make the requested resources contingent upon voter-approval of the bond.

Staff Recommendation: HOLD OPEN.

Action: Held open. Consistent with staff comments, the Chair expressed concern that the requested resources would be unnecessary if the Water Bond does not pass. Additionally, the Chair inquired as to the whereabouts of former Commission staff (i.e. were they abolished or redirected when Commission went dormant?). The Administration committed to responding to this question, and indicated intent to “go back and focus” the proposal.

Groundwater Monitoring. Chapter 7 (SBx7 6, Steinberg and Pavley) requires, for the first time, local agencies to monitor the elevation of their groundwater basins to help better manage the resource during both a normal water year and in drought conditions.

BCP: Groundwater Monitoring Program (DWR). The Governor requests five positions and \$5.3 million (\$1.3 annually for four years from Proposition 50) for the DWR to carry out the following activities required pursuant to SBx7 6:

- Determine the responsible groundwater monitoring entities in all basins and sub-basins;
- Develop standards for reporting of groundwater elevation data;
- Establish a priority schedule for the monitoring of groundwater basins and the review of groundwater elevation reports;
- Make recommendations to local entities to improve the monitoring program and assist them in complying with the program's requirements; and
- Conduct an investigation of the state's groundwater basins and report findings to the Governor and the Legislature.

In order to support this request, the Governor additionally requests a reversion of Prop 50 funds originally appropriated to the CALFED Bay-Delta Program in the Budget Act of 2003 for the Red Bluff Diversion Dam Project.

Staff Comments. SBx7 6 reflects a break-through for the state in groundwater monitoring, as prior law allowed voluntary cooperation in management of groundwater basins, but did not provide for any reporting of groundwater elevation. However, as with other parts of the Water Package, a consensus was not reached on how best to fund new programs on an ongoing basis. In the case of groundwater monitoring, SBx7 6 authorizes the use of any applicable bond funds, but staff notes that the proposed Prop 50 funding is not an ideal match with the required activities. Therefore, the Committee may wish to approve this request for only one year and, similar to other Water Package proposals discussed earlier, investigate (or request the Administration to investigate and propose) an alternative, beneficiary-pays, long-term financing plan.

Staff Recommendation: HOLD OPEN.

Action: <i>Held open.</i>

Water Conservation. Chapter 4 (SBx7 7, Steinberg): (1) creates a framework for future planning and actions by urban and agricultural water suppliers to reduce California's water use; (2) requires, for the first time, the development of agricultural water management plans; and (3) requires urban water agencies to reduce statewide, per capita water consumption 20 percent by 2020 (20x2020).

BCP: Implement the Water Conservation Act of 2009 (DWR). The Governor requests 15 positions and \$12.3 million over three years (\$5.1 million for FY 2010-11) from Prop 84 to carry-out statewide water conservation activities pursuant to SBx7 7, including planning efforts and technical assistance related to implementing the 20x2020 Plan for urban per capita water use reduction.

The Governor additionally requests a reversion of \$28 million in Prop 84 funds originally appropriated to the Two-Gates Project pursuant to SBx7 8, so that sufficient Prop 84 authority is available to fund the requested water conservation and Council expenditures. Instead, the Governor proposes a new appropriation of \$28 million from Prop 50 to support the Two-Gates Project.

Staff Comments. Staff has no significant concerns with the use of Prop 84 funds to support SBx7 7 implementation in FY 2010-11, and notes that the Water Bond Act of 2010 would provide additional out-year funding for these activities. However, to the extent that the Water Bond does not pass, or the Legislature wishes to use Prop 84 funds for other purposes, the Committee may wish to approve this request for only one year and investigate (or request the Administration to investigate and propose) alternative funding (e.g., a broad-based water fee to fund ongoing conservation efforts).

Regarding the Two-Gates Project, which the Governor proposes to fund from a different source than originally contemplated in the Water Package, the LAO notes that the federal government has put the project on hold due to concerns about a scientific review of the proposal and indicates that it is uncertain at this time if, and when, federal authorities will resume funding of the project. The LAO additionally provides the following recommendation:

Two-Gates Project Should Be Put on Hold. We recommend that the Legislature approve the Governor's proposal to revert the Proposition 84 bond funding for the Two-Gates Fish Protection Demonstration Project. However, we recommend that it not approve at this time the administration's proposal to appropriate an identical amount of Proposition 50 funding for the project. This project should be put on hold until such time as the federal government again agrees to support the project and the state has had an opportunity to reevaluate the proposal.

The Committee may wish to have the DWR provide an update on the Two-Gates Project, particularly with regard to whether there is any sign that the federal government plans to move forward on the project in the foreseeable future.

Staff Recommendation: HOLD OPEN.

Action: Held open. The Chair indicated intention to preserve Two-Gates "deal" even if there is no intent to expend funds in the BY.

Other Water Package Proposals. For the sake of context, staff notes that the Committee previously heard and held open the following Water Package budget proposals:

1. Department of Fish and Game: SBx7 1 – Delta In-Stream Flow Criteria. The Governor requests five positions (including 2.2 temporary help) and \$1 million (Prop 84) to implement the Delta in-stream flow criteria requirements of Chapter 5, Statutes of 2009 (SBx7 1; Simitian).

2. State Water Resources Control Board (SWRCB): Water Conservation Measures (Implement SBx7 7). The Governor requests one position and \$155,000 (reimbursement authority) to perform an advisory role in the implementation of SBx7 7.

3. SWRCB: Delta Watermaster and Delta Flow Criteria (Implement SBx7 1). The Governor requests 4.5 positions and \$673,000 (Water Rights Fund) for the Delta Watermaster Program and \$590,000 (reimbursement authority) for development of Delta flow criteria.

4. SWRCB: Improve Water Diversion and Use Reporting (Implement SBx7 8). The Governor requests 2.5 positions and \$253,000 (Water Rights Fund) to process new and supplemental Statements of Water Diversion and Use (Statements) filed in the first year after enactment, and to prepare emergency regulations that allow for the electronic filing of reports.

Staff Recommendation: Continue to HOLD OPEN these items until such time as the Committee is prepared to act on the entire package of water proposals in a May Open Issues hearing.

Action: No discussion. All items remain open.
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Review of the Bond Context

The following brief review of the current bond “context” is prelude to a large number of bond requests that follow, both from the DWR and a variety of conservancies and commissions.

Before “the Freeze,” All Bond Appropriations Received Cash. Historically, the Pooled Money Investment Account (PMIA) maintained a “pool” of cash that was used to support bond expenditures across state government. Whenever the pool of funds needed to be replenished, the Treasurer would go to the bond market and sell bonds in order to raise the cash necessary to replenish the pool.

Since Freeze, Bond “Demand” Far Outstrips Cash “Supply.” As discussed in previous hearings (and in some depth on March 4), during the statewide cash crisis of late 2008 and early 2009, the PMIA ran out of cash and a “bond freeze” ensued. Although the state weathered the cash crisis and subsequently resumed selling bonds, the “demand” for bond proceeds (i.e., the amount of bond appropriations approved by the Legislature) has continued to far exceed (by billions of dollars) the “supply” of cash (i.e., the amount of bond proceeds available from actual bond sales). As such, the Administration, and specifically the Department of Finance (DOF) in coordination with the Governor’s Office, has assumed sole responsibility for allocating limited bond cash across the panoply of bond-funded programs.

When Legislature Approves “Excess Demand,” Governor Gets to Set Ultimate Priorities. Relative to the prior practice, in which all bond expenditures approved by the Legislature received cash, the “new” paradigm has resulted in a diminution of legislative control over the prioritization of scarce bond funds. In simple terms, if the Legislature approves expenditure of \$10 bond dollars—say \$1 for each of ten programs—but only \$5 in actual bond proceeds are available, then the Governor gets to decide which five programs receive funding and which five do not.

The above scenario has played out for over a year now, and even after the Treasurer sold nearly \$6 billion in bonds in March 2010, total bond appropriations continue to exceed available bond proceeds. As the DOF continues to manage the bond allocations, the Committee has requested greater detail/transparency regarding its priority-setting process. For example, which departments/programs/projects received the roughly \$6 billion from the recent bond sales, which did not, and why? Perhaps most importantly, what factors guided decisions about the allocations on the margin (i.e., what set apart the “last” program to receive funding and the “last” program that did not receive funding)?

Below is a table showing the allocation of bond dollars from the Spring 2010 sales across broad categories within Resources and Environmental Protection. Other broad categories (e.g., education, housing, etc.) were available, but have been collapsed into “Other.”

Allocation of 2010 Spring Bond Sale Proceeds

Agency		Final Spring 2010 Bond Sales
Existing Projects		
Resources	\$	487,310,000
DWR	\$	573,355,000
Water Board	\$	69,400,000
Other	\$	1,373,457,321
Total Existing	\$	2,503,522,321
New Projects		
Resources	\$	703,615,000
DWR	\$	20,000,000
Water Board	\$	10,158,659
Other	\$	2,662,704,020
Total New	\$	3,396,477,679
Grand Total		\$ 5,900,000,000

Additional Spring Bond Capacity*	\$	1,100,000,000
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*The Treasurer has indicated a total of \$7 billion may be issued in the Spring, with the potential of a third sale in June.

Staff Comments. Staff notes that, several weeks removed from the bond sales, the information above is all that has been provided by the DOF, while no information has yet been made available about allocations at the programmatic level. Additionally, at the time of this writing, the DOF has yet to offer any detailed explanation of its process or how these allocations were determined. As such, staff continues to recommend that the Committee hold open all bond items (and this recommendation is reflected throughout the remainder of the agenda).

3860 Department of Water Resources

The Department of Water Resources (DWR) protects and manages California's water resources. In this capacity, the department maintains the State Water Resources Development System, including the State Water Project (SWP). The department also maintains public safety and prevents damage through flood control operations, supervision of dams, and water projects. Historically, the department was also a major implementing agency for the CALFED Bay-Delta Program, tasked with putting in place a long-term solution to water supply reliability, water quality, flood control, and fish and wildlife problems in the San Francisco Bay Delta. As noted above, that program was abolished with SBx7 1, and CALFED responsibilities were transferred to new entities, including the Delta Stewardship Council.

Additionally, the department's California Energy Resources Scheduling (CERS) division manages billions of dollars of long-term electricity contracts. The CERS division was created in 2001 during the state's energy crisis to procure electricity on behalf of the state's three largest investor owned utilities (IOUs). The CERS division continues to be financially responsible for the long-term contracts entered into by the department. (Funding for the contracts comes from ratepayer-supported bonds.) However, the IOUs manage receipt and delivery of the energy procured by the contracts. (More on the CERS division of DWR is included in the Energy and Utilities section of this report.)

Governor's Budget. The Governor's Budget includes \$1.5 billion (\$188 million GF) for support of the DWR, a decrease of approximately \$1.6 billion, due primarily to reduced bond fund expenditures. An additional \$3.7 billion in CERS funding is not subject to the Budget Act (these funds are primarily for energy payments related to the 2001 electricity crisis).

ITEMS PROPOSED FOR DISCUSSION

1. BCP: Create Flood Emergency Fund (BBL). Under current law and practice, the DWR responds to local requests for assistance related to flood emergencies. This can be after a flood is in progress, or prior to a flood event when imminent failure of a levee seems likely. The DWR's budget has been built in the past on the assumption that three flood emergency events will occur each year at a cost to the state of approximately \$500,000 per flood event. The DWR's activities include providing sandbags, coordinating state flood fighting efforts (including Conservation Corps members), and levee monitoring. However, actual flood emergency events, and the associated costs for the department to respond, vary greatly based on the weather pattern in any given year. The response to a single flood event has sometimes cost the state more than \$1 million.

Governor's Budget. The Governor requests a shift of \$1 million in baseline GF to a new Emergency Fund ("E-Fund") for exclusive use in responding to imminent flood threats with duration of no more than seven days. The Administration would be provided

authority to redirect the existing GF support for flood management (currently totaling \$40 million GF). The Director of DWR could access this new fund, at his or her discretion, to support emergency response activities. Proposed budget bill language (BBL) would further allow the DOF to immediately transfer additional funds (GF) to the E-Fund without legislative notification whenever the \$1 million appropriation was exhausted.

Staff Comments. According to the Administration, the establishment of a flood E-Fund is necessary because the existing budget (which allocates approximately \$1.5 million annually for emergency flood response activities) provides inadequate flexibility to the DWR to proactively engage imminent flood threats and avert potential disasters or reduce their costs. Under existing law and practice, a department director may not expend at a rate so as to incur a deficiency in funding and no additional funding authority is available to the DWR until the Governor has issued a declaration of emergency (which usually does not occur until after the disaster has struck). The DWR notes that the California Department of Forestry and Fire Protection (DFFP) E-Fund for emergency fire suppression and detection has proven effective in addressing similar issues with regard to fire threats.

As detailed in the *LAO Analysis of the 2010-11 Budget*, of the \$40 million for flood baseline activities, the DWR proposes to allocate \$12.8 million in GF support for flood emergencies, response, and recovery activities, from which \$1 million could be redirected by the DWR to the new E-Fund. Significant additional funding beyond these resources would be available under the Governor's budget proposal for flood management purposes. This includes additional expenditures for flood system maintenance, risk notifications, activation of the State/Federal Flood Operations Center, and the conduct of feasibility studies for improvements to the state system of flood control. The department would also be provided \$211 million in bond funds to evaluate floodplains as well as to complete flood system improvements.

The LAO notes concern with the general lack of justification for this proposal, but is most critical of the lack of fiscal controls and expenditure criteria, as noted below:

E-Fund Proposal Lacks Sufficient Fiscal Controls. As noted earlier, the administration's proposal would redirect General Fund monies from the existing flood management program to a new emergency fund. As we also discussed, DOF would then be allowed to replenish the fund at its discretion with General Fund monies, without any prior notification to the Legislature. We find that this type of "revolving door" funding authority could substantially undermine legislative oversight of departmental expenditures and would provide insufficient fiscal controls. (We have similar concerns about an emergency fund for emergency fire suppression.) We further explain our concerns below.

Funding Impacts to Current Programs Unclear. The department has not explained which current flood management activities would be affected by the redirection of resources to the new E-Fund. While the department states that the level of any current programmatic activity would not be reduced, it is not clear

how this could be the case if funding formerly available for these activities were now set aside in the E-Fund. In our view, such changes greatly weaken legislative oversight over state spending in this area.

Basic Criteria and Priorities for Expenditures Lacking. The administration has not explained how monies in the new E-Fund would be allocated or prioritized by the department. According to the department, the E-Fund could be accessed simply when the department determined there was an “imminent threat” of a flood. It is unclear, however, whether this means the department could access the funds to deploy personnel and equipment even if the customary process of declaring an emergency has not yet been completed.

Ultimately, the LAO recommends the Legislature deny the Governor’s request.

Staff generally agrees with the LAO’s assessment of the proposal, and shares the concern that, as proposed, the E-Fund would not provide the Legislature with adequate fiscal oversight of flood threat expenditures. Furthermore, based on past history, the DFFP E-Fund is not a model the Legislature should look to replicate if it does wish to provide additional flexibility to the DWR in proactively addressing imminent flood threats. Rather, if an E-Fund is to be considered it should be well circumscribed by legislative authority, with clearly specified uses, reporting language, and augmentation limitations/thresholds. Given the significant risk of flood across large parts of California, staff recommends the Committee ask the DWR to more clearly articulate its case (e.g., by identifying past events when the lack of an E-Fund cost the state because of its inability to respond early and adequately to a flood threat), and to explore the options available for reaching an accommodation in which the DWR can obtain additional budgetary flexibility without the Legislature significantly diminishing its fiscal prerogatives.

Staff Recommendation: HOLD OPEN.

Action: Held open. The Chair indicated responsiveness to the general impulse behind the proposal, but requested additional boundaries—e.g., limitation on use of funds that fits “imminent threat” definition (3 days?).

2. BCP: FloodSAFE Support (BBL). Prior to the 1900s, the California Central Valley routinely flooded, transforming it into an inland sea. However, this changed in the mid-1900s with the completion of a vast flood control system consisting of levees, weirs, bypasses, and overflow areas. This system fueled the growth of California's agricultural sector and paved the way for millions to settle in the Valley.

However, following years of benign neglect, the state experienced a number of flood control system failures, and in the early 2000s was found liable in the *Arreola* and *Paterno* cases for damages caused by levee failures in 1995 and 1986, respectively. Then, in the wake of the Hurricane Katrina disaster in New Orleans (after which the Sacramento area was identified as the American city most likely to experience "Katrina-like" flooding), the FloodSAFE California (FloodSAFE) initiative was launched in 2006 in order to begin the long process of improving existing flood management systems in California—including levee evaluation, repair, and improvement; delineating flood prone areas; improving flood emergency response; and informing the public about flood risks. FloodSAFE is supported by multiple voter-approved bonds, including Proposition 1E, Proposition 84, and Proposition 13.

Governor's Budget. The Governor requests continued FloodSAFE funding of \$210.8 million (including \$173.8 million Proposition 1E; \$21 million Proposition 84 [continuously appropriated]; and \$16 million Proposition 13) and 37 positions (including 15 new, full-time positions; 13 new limited-term positions; and nine existing positions) to carry out activities across six functional areas. The functional areas are as follows:

- 1) Emergency Response** – The goal of this functional area is to improve the state's flood forecasting and provide adequate materials and improved coordination with locals to quickly respond to flooding events. Examples of expenditures in this area include the deployment of rock material in the delta to be ready in the occurrence of levee failure; levee inspection improvements; improved flood forecasting; and outreach to local responders. To-date, the DWR has been appropriated \$32.2 million for this functional area.

The Governor requests **\$14 million and nine new positions** in this area for: improvements in flood monitoring; climate data collection and runoff forecasting; reservoir operations and river forecasting; and flood operation emergency response. This funding is for ongoing programs.

- 2) Operations and Maintenance** – The goal of this functional area is to make sure that levees, flood corridors, channels, and other flood management facilities are maintained and are in working order. Examples of expenditures in this area include inspections of 293 miles of DWR maintained levees, repair of 114 critical flood-damage sites, conducting vegetation management activities on the Sacramento River flood control projects, completion of sediment removal in the Yolo Bypass and Tisdale Bypass, and control system upgrades at the Sutter Bypass Pumping Plants. To-date, the Department has been appropriated approximately \$30 million.

The Governor requests **\$1 million and four new positions** to support long range efforts to provide environmental mitigation as required for sediment removal and levee repair sites. This represents the first year of funding specifically for these activities.

- 3) Floodplain Risk Management** – The goal of this functional area is to reduce the consequences of flooding by rivers by identifying floodplains to better inform local planning decision making. Examples of prior expenditures in this area include floodplain mapping program, technical assistance to local agencies, building code updates, and 100/200 year Sacramento-San Joaquin floodplain maps.

The Governor's requests **\$11.1 million** for this area for alluvial fan floodplain evaluation and central valley floodplain evaluation and delineation. This represents the first year of funding specifically for these activities.

- 4) Flood Projects and Grants** – The goal of this area, which contains the majority of FloodSAFE expenditures, is to repair, rebuild, or construct new flood protection projects. Prior expenditures in this area include support for the following: urban area early implementation projects on the Feather River, Natomas Basin, Star Bend and Bear River; the flood protection corridor program; the Sacramento River Flood Control System; and the Delta Levee Flood Protection Program.

The Governor requests **\$143 million** (Propositions 84, 1E and 13) to support: State-Federal Flood Control System Modifications (\$50 million); Dutch Slough Tidal Marsh Habitat Restoration (\$3.5 million); Flood Control Subventions Program (\$40 million); Flood Protection Corridor Program (\$20 million); Yuba Feather Flood Protection Program (\$5.9 million); Central Valley Nonstructural Grant Program (\$29 million); North Delta Flood Control and Ecosystem Restoration Project (\$5 million). All of the funding in this proposal except for the Central Valley Non-Structural Grant Program (\$29 million) is an ongoing expense.

- 5) Evaluation and Engineering** – The goal of this functional area is to perform evaluations and assessments of the State-Federal Flood Control System in the Central Valley and the Delta. Prior expenditures in this area include the development of a GIS database of the system, performing core samples of urban project levees, and various levee and hydrological analyses.

The Governor requests a total of **\$2 million** in contract support for follow up efforts for the Delta Risk Management Strategy study. This proposal is an ongoing expense.

- 6) Flood Management Planning** – The Goal of this functional area is to assess how to integrate all of the different flood facilities, operations, and other projects

into one system. Some examples of work in this area include the draft California Water Plan Update 2009, five regional central valley flood protection planning forums, and working groups with local agencies. Funding for this functional area has been in place since 2007-08, primarily for the update of the California Flood Plan.

The budget (**\$24.2 million**) is proposed to continue funding for the Statewide Flood Planning Management Program (\$5.9 million) and the development of the FloodSAFE Conservation Strategy (\$9.5 million) and provide new funding for Delta Subsidence Reversal (\$8.25 million) and the Central Valley Flood Protection Plan (\$15.1 million and 12 new positions).

Finally, the Governor also requests reversion of approximately \$2.5 million from Proposition 13 funding originally appropriated in 2000, and most recently reappropriated in 2006.

Staff Comments. Generally, this request represents a continuation of activities funded in prior years, and staff has no significant concerns with these ongoing expenditures. However, staff echoes concerns of staff in the Assembly that the proposed expenditure of Proposition 1E floodway corridor dollars for the Central Valley Non Structural Grant Program (\$29 million) could be a misuse of funds for their intended purpose if they are used for levee improvements. Thus, the Committee may wish to have the DWR clarify its intent with regard to these funds.

Staff Recommendation. Consistent with other bond funding proposals—HOLD OPEN.

Action: <i>Held open.</i>

3. BCP: Salton Sea Conservation Implementation. The modern-day Salton Sea (Sea) was formed in 1905 when canal diggers from the Imperial Valley made a cut in the western bank of the Colorado River that was breached by heavy flood waters allowing nearly the entire flow of the river to run into the Salton Sink (which sits below sea level). As engineers struggled to repair the damage over two years, the basin filled up and the Sea was created.

The Sea became an instant attraction to migrating birds, and supported (and, in some cases still supports) various introduced species of fish. However, without any natural drainage, and fed by relatively meager inflows from three primary rivers, as well as agricultural run-off from the Imperial and Coachella Valleys, the Sea has receded over the years, and concentrations of salt and fertilizer run-off have increased. As a result, wildlife habitat around the Sea is shrinking and becoming more degraded, and exposed lake bed is releasing toxic dust into the prevailing winds. While the price tag for full-scale restoration is currently out of the state's reach (e.g., one draft plan estimates \$9 billion over 25 years), the Legislature has, for several years running, approved funding for small-scale projects, consistent with the 2007 "Salton Sea Restoration and Management Plan."

Governor's Budget. The Governor requests one-year funding of \$4 million (reimbursement authority) to carry out Salton Sea restoration activities. These funds will be provided through reimbursements from the Department of Fish and Game and the Natural Resources Agency and will be used to construct shallow habitat on the sea as is outlined in the 2007-08 Salton Sea Management Plan.

Staff Comments. The Colorado River Quantification Settlement Agreement between the State, Federal Government, Imperial Irrigation Agency and the City of San Diego establishes water allocations from the Colorado River and the state's obligation for Salton Sea Ecosystem Restoration. The 2007 Salton Sea Management Plan was adopted by the Resources Agency to guide the restoration activities. The proposed funding in this request would be for the creation of low depth habitat for Salton Sea fish such as Tilapia and Pupfish.

Staff notes that funding for this effort has been approved for the last three years to implement the management plan. Staff does not have any issues with this proposal; however, the Committee may wish to receive an update on Salton Sea Restoration activities.

Staff Recommendation: Consistent with other bond funding proposals—HOLD OPEN.

Action: <i>Held open.</i>

4. BCP: Multi-Benefit Water Planning and Feasibility Studies. Proposition 84 allocated \$65 million to the DWR for the purpose of conducting statewide water planning and project feasibility studies for California's existing and future needs related to water supply, conveyance, and flood control systems.

Governor's Budget. The Governor requests \$30.6 million from Proposition 84 (including new appropriations totaling \$16 million over the next three years; and reappropriation of approximately \$14.6 million originally appropriated in FY 2007-08), and three new positions to fund the following multi-benefit water planning and feasibility studies activities:

- **Climate Change Evaluation and Adaptation:** \$7.6 million over three years and six positions to conduct detailed evaluations of current and projected climate change impacts on the state's water supply and flood control systems and identify potential system redesign alternatives and other adaptation responses to climate change.
- **Urban and Agricultural Water Use Efficiency:** \$2.5 million over three years and nine positions to begin feasibility studies for new water conservation technologies, develop new best management practices, utilize remote sensing technology for water use measurement, facilitate water transfers, manage agricultural and urban conservation grants, support an agricultural water use measurement program, conduct outreach, and provide technical assistance to various entities.
- **Completion of CALFED Surface Storage Studies:** \$4.4 million reappropriation from FY 2008-09 and 18.1 positions for the completion of surface storage studies for: 1) North of Delta Off-Stream Reservoir (Sites); 2) Los Vaqueros Reservoir Expansion; and 3) the Upper San Joaquin River Basin Storage Investigation (Temperance Flat).
- **Integration of Flood Management and Water Supply Systems:** \$5.2 million reappropriation from FY 2008-09 and 7.3 positions to continue funding a multi-disciplinary team to conduct studies to evaluate system reoperation potential with the goals of improving water supply reliability, improving water quality, protecting and restoring ecosystem health, and expanding flood protection.
- **Implementation of California Water Plan Recommendations:** \$5.9 million appropriation and \$5.1 million reappropriation from FY 2008-09 and 13.2 positions to conduct outreach, collect data and facilitate regional planning needed to update the California Water Plan.

Staff Comments. Generally speaking, Proposition 84 allocated funding for all of the planning activities identified above, and all of these activities have been funded in prior

budgets. The current set of requests either represent a need for new funding to continue ongoing activities or a reappropriation where projects were delayed due to the bond freeze. Thus, staff has no significant concerns with the request, but the Committee may wish the DWR to provide an update on the status on the Surface Storage Studies, including: (1) when they are expected to be completed; (2) the cost-benefit ratios of Temperance Flat (and others, as applicable); and (3) the current cost of water supply from each facility.

Staff Recommendation: Consistent with other bond funding proposals—HOLD OPEN.

Action: <i>Held open.</i>

5. BCP: San Joaquin River Restoration Program. The San Joaquin River historically produced major sport and commercial fisheries (including the largest spring run of Chinook salmon in California), as well as important ecological, water supply, and water quality values.

A 2005 Federal Court preliminary holding in *NRDC v. Rogers* held that the United States Bureau of Reclamation and its contractors, in their operation of Friant Dam since 1945, had not complied with state law, which requires dam owners to release sufficient water to keep downstream fish in good condition. A settlement, which incorporated a separate Federal-State Memorandum of Understanding (MOU), agreed to by Governor Schwarzenegger and signed by the Secretary for Resources, was accepted by the Federal Court in May 2006. The MOU commits the DFG and the DWR to participate in the San Joaquin Restoration Program (SJRRP) created under the settlement. Funding for the implementation of the settlement was anticipated to come from the following sources:

State

- About \$200 million in bond funds from Props 84 and 1E

Federal

- Up to \$300 million of additional Federal appropriations requiring a non-federal cost-share of an equivalent amount
- Central Valley Project Improvement Act (CVPIA) – Up to \$2 million annually of other Friant Division water users CVPIA Restoration Fund payments
- Friant Surcharge Collections – Friant contractors' environmental fee expected to average about \$5.6 million per year
- Friant Capital Repayment – Friant division water users' capital component of their water rates redirected into the San Joaquin River Restoration Fund

Governor's Budget: The Governor requests \$33.8 million in reimbursement authority (\$13.8 million in FY 2010-11; and \$20 million in FY 2011-12) in order to receive Proposition 84 funds from the Natural Resources Agency for support of year four of San Joaquin River restoration efforts.

Staff Comments. As was discussed on March 4, when a related Department of Fish and Game item was heard in Committee, staff's major concern with this program is the extent to which the federal government has failed as a fiscal partner in coming up with the \$300 million noted above. As of this writing, no additional information regarding new federal appropriations for this program was available; however, the Committee may wish to question the DWR regarding the prospects of obtaining future direct federal appropriations since the program will require more than double the funding provided in Propositions 84 and 1E.

Aside from the above question of whether the federal government is paying its fair share of SJRRP costs, staff has no significant concerns with this proposal.

Staff Recommendation: Consistent with other bond funding proposals—HOLD OPEN.

Action: *Did not discuss due to time constraints.*

6. BCP: Agricultural Drainage Reduction. The Lower San Joaquin River (LSJR) is listed as an impaired water body under the California Clean Water Act, due in part to agricultural drainage that has resulted in elevated concentrations of salt, boron, and trace elements (arsenic, chromium, mercury, selenium, and molybdenum). This has led the local and state water boards to set objectives to improve water quality, and prompted creative efforts to reduce the deleterious impacts of agricultural drainage.

Governor's Budget. The Governor requests \$1 million (\$394,000 for 1.7 positions and 0.5 temporary help; and \$606,000 for grants from Proposition 84) in FY 2010-11 to begin implementation of a new five-year program to provide grants for projects that eliminate discharges of agricultural subsurface drainage water from the west side of the San Joaquin Valley into the San Joaquin River (SJR). The resources requested would develop their work plan, prepare, solicit, and evaluate the Request for Proposal. The total expected cost for this program is expected to be \$38.6 million over a five-year period.

Eligible grant entities will be farmers that drain into the west side of the SJR and types of projects will be divided into four categories:

- **Conservation measures:** Projects that reduce the volume of subsurface drainage effluent while at the same time saving water for other beneficial uses. These measures include source reduction, shallow groundwater table management, and groundwater management.
- **Reuse Measures:** Projects that reduce the amount of subsurface drainage effluent while at the same time making additional water available for irrigation and other beneficial purposes. This will involve measuring comprise reuse in salt tolerant crops, regional integrated drainage management systems, reuse in wildlife habitats, wetlands, and pastures.
- **Treatment Measures:** Physical, chemical, and/or biological processes that remove salts and/or harmful constituents from subsurface agricultural drainage water prior to discharging into the SJR.
- **Disposal Measures:** Enhanced evaporation systems that help to store the salts from concentrated agricultural subsurface drainage water.

Staff Comments. This is a new program and the resources requested would generally be for developing local assistance program criteria to address West Side agricultural drainage. The DWR has requested \$606,000 in local assistance funds for the first year of this program with the funding level increasing annually to \$15.3 million in FY 2014-15 (for a total of \$36.6 million).

The proposed activities are consistent with the following bond section:

PRC 70529(a). Projects that reduce or eliminate discharges of salt, dissolved organic carbon, pesticides, pathogens and other pollutants to the San Joaquin River. Not less than forty million (\$40,000,000) shall be available to implement projects to reduce or eliminate discharges of subsurface agricultural drain water from the west side of the San Joaquin Valley for the purpose of improving water quality in the San Joaquin River and the Delta.

Notwithstanding the above authorization, however, staff notes concern that the state is footing the bill for activities for which the federal government is really responsible. The federal Central Valley Project delivers water to most of the farmers from whose land the drainage is occurring, and Congress has agreed decades ago to build a drainage system for the area. However, the project, which would have included a 188-mile concrete-lined canal designed to convey saline drainage water to the Delta, became mired in controversy and resulted only in an 85-mile canal “portion” that discharged into the Kesterson reservoir. The discovery of bird deformities due to high concentrations of selenium led to the shutdown of the reservoir, and, subsequently, to the plan to reroute drainage flows into the SJR (and, ultimately, to the problem driving this BCP). The Committee may wish to ask the DWR for an update on the role (or the lack thereof) on the part of the federal government to solve these ongoing drainage problems.

Additionally, the Committee may want to ask the department: (1) how it came up with the various grant categories cited above and the \$606,000 level of initial program funding; and (2) when it anticipates that it will be ready to begin awarding grants in the budget year. Because this is a new program, staff recommends that the Committee approve the staffing as ongoing but only approve the local assistance funds for one year in order to give the Legislature an opportunity to assess the program design in next year’s budget process before approving ongoing funding.

Staff Recommendation: Consistent with other bond funding proposals—HOLD OPEN.

Action: <i>Did not discuss due to time constraints.</i>
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7. Staff Issue: Coachella Arsenic Contamination. Bond funds may be available to assist residents of the Coachella Valley in obtaining safe drinking water.

Background. In the southeastern Coachella Valley, water quality and access to potable water is a major health priority for residents, largely farm workers and their families living in mobile home parks throughout the unincorporated communities of Mecca, Thermal, and Oasis. Currently, most mobile home parks in these areas are served by private wells, where landowners are responsible for the water quality. As reported by The Desert Sun on January 31, 2010, Riverside County environmental health officials know of wells at 19 mobile home and RV parks that recently tested positive for dangerous levels of arsenic in their groundwater. Studies have linked long-term ingestion to even low levels of arsenic (10 parts-per-billion), to risk of cancer, as well as skin and circulatory system problems.

The Coachella communities above are seeking a safe and sustainable solution to their drinking water problem. Ideally, they would like to hook-up to the nearby Coachella Valley Water District; however, the water district has indicated that it cannot have its existing ratepayers foot the bill. Therefore, due to the modest means of the above communities, another solution is necessary.

Staff notes that Chapter 1, Statutes of 2008, Second Extraordinary Session (SBx2 1, Perata) appropriated \$2 million in Proposition 84 funds to the DWR to address similar water quality and wastewater treatment needs of disadvantaged communities in the Tulare Lake Basin. Should the Committee deem the above need compelling, it may wish to consider a similar use of Proposition 84 funds. To this end staff has obtained information regarding available balances in the Inter-regional/Unallocated “pot” of funding provided for under Proposition 84 for Integrated Regional Water Management (IRWM) projects.

As displayed below, with the appropriation of \$28 million to the Two-Gate Project, the Legislature inadvertently overappropriated Proposition 84 Inter-regional/Unallocated IRWM funds. The Governor proposes to revert that \$28 million and instead appropriate a total of \$23.9 million on other portions of the Water Package (\$14 million to the Delta Stewardship Council for the Delta Plan; and \$9.9 million for Water Conservation pursuant to SBx7 7). This would leave an unappropriated balance of \$25,000.

IRWM Funds Available for Appropriation to the DWR (PRC Sec. 75026 et seq.)

Category	Dollars (in thousands)	Notes
Beginning Balance	\$100,000	
Less Program Delivery (5% Admin)	-5,000	
Less Statewide Bond Costs (3.5%)	-3,500	
Balance for Projects	\$91,500	
Prior Appropriations		
FY 2008-09 (CALFED Science)	-\$8,000	All committed
FY 2008-09 (Colorado River)	-13,484	All expended
SBx2 1 of 2008 (Various)	-46,091	\$2.725 million committed and \$152,000 expended; reappropriation of balance requested in Finance Letter
<i>Subtotal</i>	23,925	(uncommitted = \$67,575,000)
SBx7 1 of 2009 (Two-Gates)	-\$28,000	Inadvertent overappropriation
Proposed Appropriations		
FY 2010-11 Proposed Reversion	\$28,000	Corrects overappropriation
FY 2010-11 Delta Stewardship Council BCP	-14,000	Fund Delta Plan (pursuant to SBx7 1)
FY 2010-11 Water Conservation BCP	-9,900	(pursuant to SBx7 7)
<i>Available Unappropriated Amount</i>	\$25	

So, should the Committee desire to use these IRWM funds to support an integrated water quality project to address the needs of the communities identified above, it will need to look at either denying or partially denying one of the Governor's related Water Package BCPs, or consider using uncommitted funds from SBx2 1 that the Governor is proposing for reappropriation (staff has not yet fully reviewed this proposal and so it is not included in this agenda).

Staff Recommendation: Direct the DWR, DOF, and the LAO to work with staff in identifying Proposition 84 IRWM Inter-regional/Unallocated funds, or other fund sources to address the imminent needs of the Coachella Valley communities identified above.

Action: No action. The Chair requested the Administration and the LAO to work with staff to try and identify suitable funding (approximately \$2 million) to support development of infrastructure plans so that the communities identified can compete for other safe-drinking water funds in the future.

8. Staff Issue: Williams Settlement—San Francisco Turbine Sales. Unanticipated revenues to a state fund may be available to assist in addressing the current GF shortfall.

Background. Following the 2001 “energy crisis,” the state settled claims against several energy corporations, enabling it to renegotiate long-term energy contracts (at lower prices) and obtain cash and assets. As part of one of these agreements, the Williams Settlement (with Williams Energy), the state received \$101 million in cash and \$90 million in assets, including six gas-fired turbine generators that the Attorney General allocated to two local districts (four of the turbines were allocated to the San Francisco Public Utilities Commission and two to the Kings River Conservation District for use in the Fresno area). It was anticipated that the turbines would be used to build new “peaker” plants to provide energy generation to meet peak load requirements. However, by the terms of the 2003 Williams Implementation Agreement, if the turbines were ever to be sold, then the state was to receive a portion of the assets.

Staff Comments. Staff has learned that the City of San Francisco recently sold at public auction the four turbines it received from the state in the Williams Settlement. The sale grossed somewhere in excess of \$40 million. By the terms of the Implementation Agreement, San Francisco is entitled to \$2.5 million from the sale of each turbine (\$10 million total), plus some additional amount (including five percent of any amount above \$2.5 million per turbine). Meanwhile, any remaining proceeds are to be deposited into the Electric Power Fund (Fund), which is continuously appropriated to the DWR. Based on conversations with the DWR, staff has learned that approximately \$21 million has already been deposited in the Fund from the sale, and the DWR is currently in talks with the City of San Francisco about the disposition of roughly \$8 million in remaining sale proceeds. DWR staff have indicated that it is the department’s intent to use the sale proceeds deposited to the Fund to effectively credit ratepayers via the DWR’s next Revenue Requirement submittal to the California Public Utilities Commission.

While Legislative Counsel acknowledges that the DWR’s proposed use of the sale proceeds is permissible under existing law, Counsel have provided staff with a verbal opinion that the funds in question are fungible to the GF. Therefore, given the magnitude of the state’s GF deficit, the Committee may wish to consider transferring the \$21 million (plus any additional balance received from the sale) from the Electric Power Fund to the GF. Given that the Electric Power Fund is continuously appropriated, staff recommends that the Committee direct the DWR not to expend the funds until such a decision has been made.

Staff Recommendation: NO ACTION at this time (as the Committee will want to investigate this matter more fully). DIRECT the DWR not to expend any proceeds received from the sale of the San Francisco turbines until the Committee has determined how it wishes to allocate the funds.

Action: No action. *Legislative Counsel provided opinion that any proceeds obtained by the state from the Williams Settlement are revenues from litigation and are fungible to the GF. The Chair expressed “no opinion,” but asked that the funds in question no “disappear while we’re deciding.” DWR indicated that “revenue requirement” would not go to the PUC until August.*

9. Staff Issue: Use of Agricultural Easements in Flood Corridors. The state has the opportunity to use unappropriated bond funds to achieve two important goals simultaneously—reduce flood threats to public health and safety, and conserve farmlands that are subject to the development pressures of population growth.

Background. The California Farmland Conservancy Program (CFCP)—implemented by the Department of Conservation and discussed in somewhat more detail on page 45—provides grant funding to non-profit land trusts and local governments for the purchase of agricultural conservation easements that protect farmland in perpetuity. However, existing law does not permit the CFCP to provide grants for agricultural flood easements.

Proposition 1E provided (pursuant to Public Resources Code Section 5096.825) \$290 million in bond funding for protection, creation, and enhancement of flood protection corridors and bypasses through various means, including:

- Acquiring easements and other interests in real property to protect or enhance flood protection corridors and bypasses while preserving or enhancing the agricultural use of real property; and
- Acquiring interests in, or providing incentives for maintaining agricultural uses of, real property that is located in a flood plain that cannot reasonably be made safe from future flooding.

Staff Comments. Staff notes that, of the \$290 million provided under Proposition 1E for flood corridor programming, approximately \$132 million has been appropriated, \$66.2 million is proposed for expenditure in the Governor’s Budget, and \$81.4 million remains unappropriated. Therefore, funds are available should the Committee wish to direct an amount to be used for flood easements that are in all other ways consistent with the goals and practices of the CFCP for agricultural land conservation.

Staff Recommendation: Direct the DWR, DOC, DOF, and the LAO to work with staff in determining an appropriate amount and methodology for the DOC (or the DWR in consultation with the DOC) to use Proposition 1E funds to obtain agricultural flood easements that meet the state’s flood management and open space goals.

Action: No action. Both DWR and DOC expressed interest in developing way to make a Prop 1E allocation to flood easements “work “ Staff to follow-up to develop recommended action.

Items Proposed for Vote-Only**1. BCP: Water Use Efficiency Technical Assistance and Science Program (BBL).**

The Governor requests reversion of \$6 million (Proposition 50) originally appropriated in FY 2008-09 that has gone unused due to the 2008 bond freeze, and a new appropriation of \$6 million, including \$3 million for the Water Use Efficiency Technical Assistance Program and \$3 million for the Program Science Evaluation.

2. BCP: Water Supply Reliability and Urban Streams Restoration Program (BBL).

The Governor requests \$794,000 (Proposition 50), to be reverted from funds originally appropriated in FY 2003-04, for water supply reliability projects; and \$9.1 million (Proposition 84) to continue the Urban Streams Restoration Program.

3. BCP: Sacramento Valley Water Management Program (BBL). The Governor requests \$8 million (Proposition 204) to be reverted from funds originally appropriated in FY 2008-09, for the Sacramento Valley Water Management and Habitat Protection Measures Program.

4. COBCP: American River (Common Features) Project. The Governor requests \$7 million (\$5 million Proposition 1E; and \$2 million reimbursement authority) to continue the re-evaluation, design, and construction of the American River (Common Features) Project to improve the level of flood protection for Sacramento.

5. COBCP: Folsom Dam Modifications Project. The Governor requests \$38.2 million (\$26.9 million Proposition 1E; and \$11.3 million reimbursement authority) to continue design and construction of the Folsom Dam Modifications Project aimed at enhancing the flood release capability of the dam and increasing the level of flood protection to Sacramento.

6. COBCP: Mid-Valley Area Levee Reconstruction Project. The Governor requests \$2.7 million (\$1.9 million Proposition 1E; and \$750,000 reimbursement authority) to fund the Mid-Valley Area Levee Reconstruction Project which will restore levee sections of the Sacramento River Flood Control Project in reclamation districts between the Tisdale Bypass and the Sacramento Bypass.

7. COBCP: South Sacramento County Streams. The Governor requests \$6.2 million (\$4.4 million Proposition 1E; and \$1.8 million reimbursement authority) to continue construction of the South Sacramento County Streams Project to protect Sacramento from high water events in the Delta and from flooding associated with various local creeks.

8. COBCP: System-wide Levee Evaluations and Repairs. The Governor requests \$48 million (Proposition 1E) to continue: (1) system-wide evaluation of state/federal (project) levees; (2) evaluation of non-project levees that protect urban areas; and (3) repair of levees and erosion sites where deficiencies are found.

9. COBCP: West Sacramento Project. The Governor requests \$3.1 million, including: (1) \$1.2 million (\$625,000 Proposition 1E; and \$550,000 reimbursement authority) to fund the non-federal share of the development of the West Sacramento Project General Reevaluation Report; and (2) \$1.9 million (\$1.4 million Proposition 1E; and \$562,000 reimbursement authority) to fund the non-federal share of design and construction for the north and south slip repair sites of the West Sacramento Project.

10.COBCP: Yuba River Basin Project. The Governor requests \$2.7 million (\$2.2 million Proposition 1E; and \$510,000 reimbursement authority) for completion of the General Reevaluation Report and the design of the Marysville Ring Levee Reconstruction element for the Yuba River Basin Project.

11.COBCP: Butte Slough Outfall Gates Rehabilitation Project. The Governor requests \$15.1 million (Proposition 1E) to rehabilitate the Butte Slough Outfall Gates, and feature of the Sacramento River Flood Control Project that controls the passage of floodwaters from the Butte Basin to the Sacramento River.

12.COBCP: Lower Cache Creek, Yolo County, Woodland Area Flood Control Project. The Governor requests \$1.6 million (\$1.4 million Proposition 1E; and \$200,000 reimbursement authority) for a feasibility study of the Lower Cache Creek, Yolo County, Woodland Area Flood Control Project to improve the existing 10-year flood protection.

13.COBCP: Lower San Joaquin River Feasibility Study. The Governor requests \$1.7 million (Proposition 1E) for the Lower San Joaquin River Feasibility Study to reduce flood damage between Mariposa Bypass and north of Stockton.

14.COBCP: Sutter County Feasibility Study. The Governor requests \$1.9 million (\$1 million Proposition 1E; and \$861,000 reimbursement authority) to investigate measures to improve the level of flood protection for the Yuba City Basin from a 100-year event to the maximum level feasible.

15.COBCP: Land Acquisitions for Mitigation Bank(s) to Support Delta Levee Repairs. The Governor requests \$1 million (Prop 84) to acquire approximately 100-150 acres of land in the Delta where habitat could be restored to provide mitigation for needed levee repairs in the Delta.

Staff Comments. Staff has no concerns with the merits of Items 1-15; however, because each is bond-funded, consistent with the rationale discussed at previous hearings and outlined previously in this agenda, staff recommends the Committee hold all of these items open.

Staff Recommendation: Consistent with other bond funding proposals—HOLD OPEN.

Action: Held Open..

Various Bond Funding Requests

The Governor requests the following bond appropriations and reappropriations for conservancies (and the Wildlife Conservation Board) in the Natural Resources Agency. The Committee may wish to discuss the merits of various proposals; however, consistent with other bond-related requests heard to-date, staff recommends holding these items open until: (1) all such proposals have been heard; (2) additional detail on recent (March) bond sales and bond proceed allocations has been provided by the Administration; and (3) the Committee's priorities have been discussed and established.

3125 California Tahoe Conservancy

The California Tahoe Conservancy (CTC) acquires and manages land to protect the natural environment, provide public access and recreational facilities, and preserve wildlife habitat areas in the Lake Tahoe Basin. It also awards grants to other agencies and nonprofit organizations for the purposes of its programs.

1. BCP-2: Fund Shift to Maintain Baseline Support Budget. The Governor requests \$49,000 in Proposition 50 (Prop 50) funding to replace exhausted Proposition 12 program delivery funds that historically supported CTC baseline activities.

2. BCP-3: Implementation of the Environmental Improvement Program (EIP) for the Lake Tahoe Basin. The Governor requests \$50,000 in Prop 50 local assistance funding to support ongoing implementation of the EIP.

3. COBCP-1: Implementation of the EIP for the Lake Tahoe Basin—Reappropriation Only (BBL). The Governor requests an extension of the encumbrance period for frozen bond funds originally appropriated in the 2007 Budget Act (estimated at \$9.2 million from Prop 84) and the 2008 Budget Act (estimated at \$1.4 million from Proposition 12 and \$4.2 million from Prop 84).

3640 Wildlife Conservation Board

The Wildlife Conservation Board (WCB) acquires property in order to protect and preserve wildlife and provide fishing, hunting, and recreational access facilities. The WCB is an independent board in the Department of Fish and Game and is composed of the Director of the Department of Fish and Game, the Director of the Department of Finance, and the Chairman of the Fish and Game Commission. In addition, three members of the Senate and three members of the Assembly serve in an advisory capacity to the board.

4. COBCP-4: Rangeland, Grazing, and Grassland Protection—Prop 84 Reappropriation. The Governor requests reappropriation of the unencumbered balance (approximately \$12.1 million) of the original 2007 Prop 84 appropriation (which

was \$14.3 million) to fund conservation easements that preserve and protect valuable rangeland, and grasslands that ensure continued wildlife, water quality, watershed, and open space benefits to the people of California.

5. COBCP-5: Oak Woodlands Conservation Program—Prop 84 Reappropriation.

The Governor requests reappropriation of the unencumbered balance (approximately \$13 million) of the original 2007 Prop 84 appropriation (which was \$14.3 million) to fund long-term private and public stewardship and conservation of oak woodlands.

6. COBCP-6: Colorado River Acquisition, Protection, and Restoration Program—Prop 50 Reappropriation.

The Governor requests reappropriation of the unencumbered balance (approximately \$9.9 million) of the original 2003 Prop 50 appropriation (which was \$32.5 million) to fund ongoing efforts in acquiring lands to preserve and protect valuable wildlife resources and working to fulfill the state obligation for regulatory requirements related to California's allocation of water supplies from the Colorado River, including restoration of the Salton Sea and related activities.

7. COBCP-7: Proposition 12 Reappropriation.

The Governor requests reappropriation of the unencumbered balance (approximately \$2.4 million) of the original 2006 Proposition 12 (Prop 12) appropriation (which was \$15.2 million) to fund various activities, including: (1) restoration or acquisition of habitat for threatened and endangered species; (2) restoration, acquisition, or protection of habitat or habitat corridors for threatened, endangered, or fully protected species; and (3) acquisition of certain real property subject to a natural community conservation plan (NCCP).

8. COBCP-8: NCCP Implementation—Prop 84 Reappropriation.

The Governor requests reappropriation of the unencumbered balance (approximately \$11.3 million) of the original 2007 Prop 84 appropriation (which was \$25 million) to fund acquisitions of key habitat lands that would contribute to the successful implementation of regional NCCPs.

3760 State Coastal Conservancy

The State Coastal Conservancy (SCC) is authorized to acquire land, undertake projects, and award grants for the purposes of: (1) preserving agricultural land and significant coastal resources, (2) consolidating subdivided land, (3) restoring wetlands, marshes, and other natural resources, (4) developing a system of public accessways, and (5) improving coastal urban land uses. In general, the projects must conform to California Coastal Act policies and be approved by the conservancy governing board.

9. COBCP-2: Resources Enhancement and Development—Prop 84.

The Governor requests \$32.8 million for various SCC programs that improve various coastal water bodies and promote public access and enjoyment of these areas, including the following: (1) \$10.2 million to the San Francisco Bay Area Conservancy; (2) \$6.3 million

to Monterey Bay watersheds; (3) \$5.7 million to San Diego Bay and watersheds; and (4) \$10.6 million to statewide conservancy programs.

10.COBCP-3: Prop 40 Appropriation and Reappropriations. The Governor requests: (1) \$2.1 million in Prop 40 funding to acquire, protect, and enhance coastal watershed resources and to grant funds for this purpose to public agencies and nonprofit organizations; and (2) multiple reappropriations of Prop 40 unencumbered balances (totaling approximately \$1.8 million) and associated anticipated reimbursements (totaling approximately \$5.2 million) for various projects.

11.COBCP-4: Prop 50 Reappropriations. The Governor requests reappropriation of unencumbered balances (approximately \$1.8 million total) of the \$120 million originally allocated to the Coastal Conservancy in Prop 50 for the purposes of watershed protection and for the acquisition and development of facilities to promote public access to, and participation in, the conservation of land, water, and wildlife resources.

12.COBCP-5: Prop 12 Appropriation and Reappropriations. The Governor requests: (1) \$5.5 million in Prop 12 funding to implement restoration projects in Santa Monica Bay; and (2) multiple reappropriations of Prop 12 unencumbered balances for projects up and down the California coast.

3810 Santa Monica Mountains Conservancy

The Santa Monica Mountains Conservancy (SMMC) acquires, restores, and consolidates lands in the Santa Monica Mountains Zone for park, recreation, or conservation purposes. The SMMC was established by the Legislature in 1980.

13.COBCP-1: Acquisition & Local Assistance Grants – Upper Los Angeles River Watershed and Santa Monica Bay and Ventura County Coastal Watersheds. The Governor requests \$4 million in Prop 84 funding for protection and restoration of rivers, lakes and streams, their watersheds and associated land, water, and other natural resources; and the protection of beaches, bays and coastal waters, and watersheds.

3830 San Joaquin River Conservancy

The San Joaquin River Conservancy (SJRC) acquires and manages public lands (approximately 5,900 acres) on both sides of the San Joaquin River between Friant Dam and the Highway 99 crossing which compose the San Joaquin River Parkway.

14.COBCP-1: SJRC Acquisitions. The Governor requests \$2.7 million in Prop 84 funding (the balance of unappropriated authorized funds for this purpose), as an appropriation to the Wildlife Conservation Board (WCB) who will administer grants and projects, to develop the San Joaquin River Parkway, to preserve and enhance its biological diversity, protect the cultural and natural resources, and provide educational

and recreational opportunities to the public, through acquisitions and conservation easements.

15. COBCP-2: SJRC Environmental Restoration, Public Access, and Recreation.

The Governor requests \$676,000 in Prop 84 funding (the balance of unappropriated authorized funds for this purpose) and \$2 million in reimbursement authority to implement public access, recreation, and environmental restoration projects along the San Joaquin River Parkway. As with the request above, the SJRC will work through the WCB to enhance priority habitat, update the Master Plan, build new trailhead staging facilities and partially fund the River West and Riverbottom Park projects. The proposal would allow expenditure of other state and non-state funds of up to \$2 million for these purposes (if received).

16.WCB COBCP-3: SJRC—Proposition 40 Reappropriation.

The Governor requests reappropriation of the unencumbered balance (approximately \$11.6 million) of the SJRC's original 2004 Prop 40 appropriation (which was \$11 million Prop 40 and \$1 million reimbursement authority) to fund complex land acquisitions and public access and recreation improvement projects that have been in progress for many years, but were recently delayed by the 2008 bond freeze and employee furloughs.

17.WCB COBCP-9: SJRC Proposition 84 Reappropriation.

The Governor requests reappropriation of the unencumbered balance (approximately \$11 million) of the original 2007 Prop 84 appropriation (which was \$10 million Proposition 84 and \$1 million reimbursement authority) to fund complex land acquisitions and public access and recreation improvement projects that were recently delayed by the 2008 bond freeze and employee furloughs.

3835 Baldwin Hills Conservancy

The Baldwin Hills Conservancy (BHC) acquires and manages public lands within the Baldwin Hills area to provide recreational facilities, open space, wildlife habitat restoration, and educational services.

18.COBCP-1: Proposition 40 Reappropriation for Acquisition & Improvement Program.

The Governor requests reappropriation of approximately \$4.8 million in Proposition 40 funding (originally appropriated in 2003) to acquire and develop open space in the Baldwin Hills area and further the expansion of the Kenneth Hahn State Recreation Area.

3850 Coachella Valley Mountains Conservancy

The Coachella Valley Mountains Conservancy (CVMC) acquires and holds, in perpetual open space, mountainous lands surrounding the Coachella Valley and natural community conservation lands within the Coachella Valley.

19. COBCP-1: Land Acquisition. The Governor requests reappropriation of \$5.5 million in Proposition 84 funding (the balance of unappropriated authorized funds for this purpose) to acquire and protect mountainous and natural community conservation plan lands.

Staff Comments. Staff has no significant concerns with the above items (1-19).

Staff Recommendation (for Items 1-19): Consistent with other bond funding proposals—HOLD OPEN.

Action: Held Open..

3480 Department of Conservation

The Department of Conservation (DOC) is charged with the development and management of the state's land, energy, and mineral resources. The department manages programs in the areas of: geology, seismology, and mineral resources; oil, gas, and geothermal resources; and agricultural and open-space land.

Governor's Budget. The Governor's Budget includes \$75.8 million (\$4.8 million GF) for support of the DOC, a decrease of approximately \$635 million, due almost entirely to the transfer of the Division of Recycling (including the Beverage Container Recycling Program) to the new Department of Resources Recycling and Recovery.

ITEMS PROPOSED FOR VOTE-ONLY

1. BCP-1: Information Technology (IT) Maintenance. The Governor requests a one-time appropriation of \$132,000 from various special funds for maintenance of the DOC's IT infrastructure.

Staff Comments. This proposal is similar to one approved by the Legislature last year and coincides with a larger plan to merge data centers throughout the Resources Agency.

2. BCP-5: Geothermal Staffing. The Governor requests \$356,000 (Oil, Gas, and Geothermal Administrative Fund) and two permanent positions and associated equipment (e.g., vehicles) to address increased regulatory workload associated with the safe operation of geothermal facilities.

Staff Comments. Geothermal power generation accounts for approximately 45 percent of the renewable power generated in California, and about five percent of overall electricity use. Due in large part to the enactment of the Renewable Portfolio Standard there has been a significant increase in the number of wells drilled and the corresponding amount of safety and inspection workload (e.g., tests and inspections increased 35 percent from 2004 to 2008). This request would increase staff in the field from six positions to eight (a 33 percent increase).

3. BCP-7: Abandoned Mine Remediation and Inventory Project Funding. The Governor requests \$1.1 million in federal funds for each of three years and two, three-year limited-term positions to implement activities specified in a \$4 million award received from the United States Bureau of Land Management (BLM) to remediate hazardous abandoned mines and inventory abandoned mine sites on BLM lands in California.

Staff Recommendation (for Vote-Only Items 1-3): APPROVE the requests (1-3) listed above.

Action: <i>Approved on a 2-0 vote (Cogdill absent).</i>
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DISCUSSION ITEMS**1. BCP-3: Orphan Facility Remediation.**

Background. An orphan facility is any oilfield facility for which the DOC has determined there is no longer a responsible party. Orphan facilities pose a hazard to the environment and public safety if left unattended, and represent a liability to the state. The DOC, Division of Oil, Gas, and Geothermal Resources is responsible for remediation of these sites using revenue from assessments on oil and gas production.

2010-11 Governor's Budget. The Governor requests a four-year limited-term appropriation of \$1 million per year for remediation of 54 orphan facilities identified in a 2007 statewide inventory. No position authority is requested, as the DOC plans to contract out for the work.

Staff Comments. According to DOC staff, the \$4 million estimate is based on past experience with this type of work and was agreed with by the oil and gas industry. As such, staff has no concerns, but would suggest, consistent with action taken in the Assembly, adopting placeholder trailer bill language (TBL) to limit the duration of the necessary fee increase to four years (the duration of this request).

Staff Recommendation: APPROVE, with placeholder TBL, limiting the fee increase to the four-year duration of the request.

Action: Approved with TBL (in conformance with Assembly) on a 2-0 vote.
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2. BCP-6: California Farmland Conservancy Program (CFCP)—Local Assistance (BBL).

Background. The CFCP provides grant funding to non-profit land trusts and local governments for the purchase of agricultural conservation easements that protect farmland in perpetuity. The California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002 (Proposition 40) specifically identified \$75 million for the preservation of agricultural lands, grazing lands, and oak woodlands conservation. Of this amount, \$45 million went to the CFCP.

2010-11 Governor's Budget. The Governor requests a one-time appropriation of \$7.9 million for the CFCP and BBL to make these funds, which were originally appropriated in 2006 but were unable to be encumbered, available for three years.

Staff Comments. Since its inception, the CFCP has provided grant funding to protect over 43,000 acres of agricultural land, and has provided over 30 planning/technical assistance grants to facilitate local farm conversion programs. Staff has no significant concerns with this proposal, but, given the scarcity of bond cash and consistent with other bond funding requests, will recommend the Committee hold the item open until all bond proposals have been heard.

Staff Recommendation: Consistent with other bond funding proposals—HOLD OPEN.

Action: <i>Held Open.</i>

Legal Services Fund Swap (Department of Justice)

The Governor's Budget contains a Department of Justice (DOJ) proposal for a legal services fund swap that affects multiple GF departments, but notably the California Coastal Commission (Coastal Commission), the State Lands Commission (SLC), and the San Francisco Bay Conservation and Development Commission (BCDC)—three public trust/land rights entities. Although Senate Budget Subcommittee No. 4 has primary jurisdiction over this proposal, the potential impact on the aforementioned entities is significant enough that it warrants discussion in this subcommittee.

Background. The DOJ represents state departments in various court matters. Under current law, special fund departments reimburse the DOJ for legal work on a billable hours basis. These payments are deposited into DOJ's Legal Services Revolving Fund.

GF departments, however, do not pay the DOJ for legal representation. Instead, the DOJ has its own GF appropriation of \$48.2 million with which it funds this legal work. The department notes that in recent years the amount of workload on DOJ attorneys has been higher than they can absorb with existing resources, and the Attorney General has been directing GF departments to obtain outside counsel, sometimes at greater hourly cost than what the DOJ charges to billable clients.

Governor's Budget. The Governor requests authority to bill GF clients for legal work as it does for special fund clients. In order to accomplish this, the department proposes to reduce its GF authority by \$48.2 million and increase its Legal Services Revolving Fund authority by an equivalent amount. Under Control Section 5.20, the Department of Finance would have the authority to determine how the legal service funding would be allocated among GF clients. The Control Section further requires quarterly reporting to the Joint Legislative Budget Committee regarding the allocations. The Administration also proposes elimination of the existing statutory requirement that charges for DOJ legal services cannot be made against the GF.

Staff Comments. The idea behind making GF departments pay the DOJ for their legal services is that client departments are more likely to exercise greater cost control if they must confront the full costs of litigation (as opposed to the current non-billable arrangement in which the true costs may not be totally transparent to the clients).

General Concerns

While these merits make this proposal worth considering, there are also trade-offs to consider. The total funding provided is \$48.2 million. However, the DOJ reports that the total number of hours worked by the DOJ for GF clients in FY 2008-09 was 456,267 hours. At DOJ's billable rate of \$170 per hour, this comes to \$77.6 million in workload, about 61 percent more than what is actually budgeted. While the DOJ reports that the department has been forced to absorb these costs in recent years through use of overtime and other resources, it is not clear that client departments could reduce their legal workload by 61 percent in the budget year.

In addition, the Administration does not propose to directly allocate the funding to client departments' budgets, but instead would rely upon the DOF to allocate the funds over the course of the fiscal year as requests come in from departments. These factors are likely to leave departments with significant uncertainty as to what they will ultimately have in their budget for legal services, making planning difficult. Adding to this uncertainty is that it is unclear what criteria the DOF would use to determine which legal requests are granted and which are denied. Finally, it is unclear what will happen if, as is likely to occur, the total funding is used up before the end of the fiscal year. Will departments be required to delay, lose, or settle cases that they might not otherwise? Or are they likely to come to the Legislature with deficiency requests?

Concerns Specific to the Public Trust Commissions

The Coastal Commission, SLC, and BCDC were established as independent protectors of public trust resources. With this independence, the commissions are relatively free to act outside of political pressure to take actions that they see are appropriate to protect public trust resources. While recent reductions in available GF resources will inevitably prove challenging for all "non-billable" DOJ clients (see table below for the top ten non-billable clients), the Governor's proposal could also threaten the independence of the commissions by allowing the DOF to make funding determinations regarding their litigation. For example, in an effort to preserve public access to the public trust lands that are our coastline, the Coastal Commission is frequently in litigation with some of the wealthiest, most well connected coastal landowners in California. Leaving the expenditure of each marginal dollar of Coastal Commission's litigation costs at the discretion of the DOF invites the perception and/or the reality of undue political influence from the Governor's Office.

Top 10 Non-Billable Client Hours and Associated Costs (Fiscal Year 2008-09)

	Department	Hours	Costs
1	Corrections and Rehabilitation	294,905	\$50,13,850
2	Mental Health	21,596	3,671,320
3	Franchise Tax Board	17,891	3,041,470
4	Governor's Office	17,686	3,006,620
5	Board of Equalization	15,931	2,708,270
6	Ca. Coastal Commission	12,722	2,162,740
7	Forestry and Fire Protection	12,586	2,139,620
8	State Water Resources Control Board	10,306	1,752,020
9	State Lands Commission	8,286	1,408,620
10	Parks and Recreation	7,837	1,332,290
	<i>Total, All Departments</i>	<i>456,267</i>	<i>\$77,565,390</i>

Options

Under the current system, non-billable client costs are "pooled," and this provides budgetary flexibility to all clients in that one client's low year for litigation costs may be another's high year. One option that Subcommittee 4 and the Administration are discussing is to continue to pool the billable hours for public trust entities. Given that

the state's ongoing fiscal crisis means GF reductions are unavoidable, this pooling approach would offer some protection to the commissions and continue to provide a degree of budgetary flexibility. Other options could include applying the proposed, or similar, cost containment strategies to the main drivers of recent increased costs (e.g., the Department of Corrections and Rehabilitation).

Staff Recommendation. NO ACTION (informational only).

Action: No action. The Committee expressed understanding for need to curtail/contain costs, but noted major concerns with the anticipated adverse impact to "public trust" entities.

Appendix A – LAO’s CALFED Recommendation

The Legislative Package and CALFED

The CALFED Bay-Delta Program. The CALFED encompasses multiple state and federal agencies that have regulatory authority over water and resource management responsibilities in the San Francisco Bay/Sacramento-San Joaquin Delta region. The objectives of the program are to provide good water quality for all uses, improve fish and wildlife habitat, reduce the gap between water supplies and projected demand, and reduce the risks from deteriorating levees. The program’s implementation has been guided since 2000 by what is referred to as the CALFED "Record of Decision"—a legal, environmental planning document that lays out the roles and responsibilities for each participating agency, sets program goals and milestones, and covers the type of projects to be pursued.

In recent years, the Secretary for Natural Resources has been the lead state agency with responsibility for CALFED program oversight, including overall program planning, performance evaluation, and tracking of the progress of these activities. Accordingly, funding for CALFED was provided from the Secretary’s budget. Through legislative budget actions, the Secretary assumed the responsibility for oversight of CALFED oversight as well as some program responsibilities that were previously carried out by the California Bay-Delta Authority (CBDA). The CBDA, originally created to coordinate implementation of continuing CALFED- and Delta-related programs, was in effect eliminated several years ago (although not eliminated in statute), when the Legislature eliminated its funding and transferred its responsibilities to the Secretary.

The passage of Chapter 5 (Statutes of 2009, 7th Extraordinary Session) in the new water package means that the new Delta Stewardship Council will take the lead role in providing oversight for CALFED. The CALFED program oversight and coordination staff in the office of the Secretary, as well as CALFED fiscal staff in CalFire, are to be transferred to the council along with related funding. In addition, the CBDA was statutorily eliminated and its responsibilities assigned to the new council.

Budget Reflects CALFED Expenditures Across Many Departments. While the new Delta council will take the lead for oversight of CALFED, multiple state agencies will continue to spend money to carry out CALFED activities. The state agencies have estimated the amounts that would be spent for these purposes (as seen in Figure 6), including some additional funding amounts requested in the 2010-11 budget plan. Information about these expenditures continues to be compiled by the Delta Stewardship Council by the reporting of the CALFED budget, which cuts across numerous departments.

Figure 6

Proposed CALFED Budget—State Funds Only*(In Millions)*

State	2010-11 (Proposed)
Department of Water Resources	\$206.2
Department of Fish and Game	69.2
State Water Resources Control Board	11.5
CALFED Bay-Delta Program (Delta Stewardship Council)	8.7
Department of Public Health	3.9
Department of Conservation	3.8
San Francisco Bay Conservation and Development Commission	0.1
Department of Forestry and Fire Protection	—
Total	\$303.5

The Governor's budget plan proposes a number of major changes in CALFED expenditures. For example, there would be a major increase in funding for SWRCB for, among other purposes, the development of Delta flow standards. A major decline for CALFED activities for DWR does not reflect an actual decline in the level of programmatic activity, but rather reflects the fact that three years' worth of expenditures (for 2009-10 through 2011-12) were all appropriated in the budget act for the current year.

Time for a Zero-Based Budget for CALFED. In past years, when CALFED and other Delta-related programs activities were at a major crossroads, the Legislature directed the administration to submit a zero-based budget identifying the proposed expenditures of the various state agencies involved in this programmatic area. The intent was to require the administration to justify all CALFED expenditures and thereby enable better legislative understanding of the overall size of the program and how funds were being expended.

Given the Legislature's new policy direction for the Delta and the recent changes in CALFED program oversight, this is an appropriate time, in our view, for the Legislature to direct the council to submit a similar zero-based budget encompassing all CALFED and Delta-related activities in conjunction with the Governor's submittal of the 2011-12 budget. The budget should include a workload analysis and the goals for each of the state's Delta-related investments. The Legislature would then be in a position to eliminate duplicative or unnecessary activities in favor of those that move the state toward the Legislature's stated policy goals for the Delta.